

ENTERED

June 25, 2021

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**JTH TAX LLC; dba LIBERTY TAX
SERVICE, et al,**

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**Plaintiffs,
VS.**

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JOSE CONTRERAS, et al,

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Defendants.

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CIVIL ACTION NO. 4:20-CV-2448

MEMORANDUM AND ORDER

Before the Court are Plaintiff's Motions to Dismiss Defendants' counterclaims and Intervenor Trinity's claims. (Docs. 39, 40). After considering the Motions, the parties' briefs, the parties' oral arguments, and all applicable law, the Court determines that Plaintiffs' Motions should be **GRANTED**.

First, as to Contreras and Trinity's breach of contract claims under the Area Developer Agreement, dismissal is proper because they fail adequately to allege breach and to explain why the release provision in the Area Developer Buyback Agreement does not bar the claim. Second, for the breach of contract claims under the Buyback Agreement, Contreras and Trinity fail to identify which Buyback Agreement they refer to and further fail adequately to allege a breach under a provision of that agreement.

Third, Contreras and Trinity have failed to plead their fraud claims with particularity. *See* Fed. R. Civ. P. 9(b). Fourth, with respect to the accounting in equity claim, dismissal is proper for failure to allege facts that would allow the Court to infer the requisite fiduciary relationship exists. Fifth, as to Century's declaratory judgment counterclaim, dismissal is warranted because the claim is a defensive counterclaim that is improperly duplicative of the original breach of contract and

trademark claims in this suit. Lastly, dismissal of Contreras' defamation claim is warranted for failure adequately to allege the defamatory nature of the statements, the requisite intent, and damages.

Accordingly, Defendants' counterclaims and Trinity's claims are **DISMISSED WITHOUT PREJUDICE** and with leave to amend their pleadings. The Court has been informed that the parties are scheduled for mediation on July 19, 2021. Defendants and Trinity have requested by email that, in the event the mediation is unsuccessful, their amended pleadings be due twenty days after the mediation. Plaintiffs do not oppose. Thus, Defendants and Trinity have until August 9, 2021, to file amended pleadings. Plaintiffs will have ten (10) days to respond.

IT IS SO ORDERED.

SIGNED at Houston, Texas, on this the 25th day of June, 2021.



HON. KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE